

EXHIBIT 400

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 In re: NATIONAL PRESCRIPTION) CASE NO.
 OPIATE LITIGATION) 1:17-MD-2804
5) Judge
 APPLIES TO ALL CASES) Dan Aaron Polster

6
7 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
8 CONFIDENTIALITY REVIEW
9
10 DEPOSITION FOR PLAINTIFF

11
12 *** *** ***
13 DEPONENT: GARY MILLIKAN
14 DATE: JANUARY 11, 2019
15 *** *** ***

1	EXAMINATION INDEX	
2	Examination by Mr. Goetz.....	10
	Examination by Mr. Hynes.....	251
3	Re-examination by Mr. Goetz.....	256
	Reporter's Certificate.....	262
4		
5	EXHIBIT INDEX	
6		
7	CVS-Millikan-2.....	171
	IRR, 8-30-13	CVS-MDLT1-10672-757
8		Highly Confidential
9	CVS-Millikan-3.....	196
	Email chain	CVS-MDLT1-83064
10		Confidential
11	CVS-Millikan-4.....	196
	SOM Process	CVS-MDLT1-83065
12		Confidential
13	CVS-Millikan-5.....	199
	Time study	CVS-MDLT1-112702
14		Confidential
15	CVS-Millikan-6.....	205
	LP Analyst Time Study	CVS-MDLT1-112686
16		Confidential
17	CVS-Millikan-7.....	208
	LP Analyst Time Study	CVS-MDLT1-112690
18		Confidential
19	CVS-Millikan-9.....	113
	Controlled Drug-DEA SOP Manual	CVS-MDLT1-8506
20		Confidential
21	CVS-Millikan-11.....	198
	Email chain	CVS-MDLT1-55836
22		Confidential
23	CVS-Millikan-13.....	159
	CVS-MDLT-110268	Highly Confidential
24		
25		

1	EXHIBIT INDEX - Continued	
2	CVS-Millikan-15.....	155
	December 2010 PSE IRR Recap	CVS-MDLT1-9740
3	Highly Confidential	
4	CVS-Millikan-18.....	35
	Personnel file	
5		
6	CVS-Millikan-22.....	156
	January 2011 Control IRR Recap	CVS-MDLT1-8258
7	Highly Confidential	
8	CVS-Millikan-33.....	239
	Track One CVS Store Information	CVS-MDLT1-7362
9	Confidential	
10	CVS-Millikan-36.....	173
	List 1 Chemicals, Policies & Procedures	
11		CVS-MDLT1-25018
		Confidential
12		
13	CVS-Millikan-37.....	233
	Irregular Order Logistics Communication	
14		CVS-MDLT1-3348
		Highly Confidential
15		
16	CVS-Millikan-38.....	233
	Email chain	CVS-MDLT1-8483
17	Highly Confidential - Public Health Information	
18	CVS-Millikan-45.....	153
	Viper PDMR Supplemental	CVS-MDLT1-67863
19	Highly Confidential	
20	CVS-Millikan-46.....	153
	Viper PDMR	CVS-MDLT1-68377
21	Highly Confidential	
22	CVS-Millikan-47.....	153
	Viper PDMR - High Priority	CVS-MDLT1-74450
23	Highly Confidential	
24	CVS-Millikan-48.....	137
	IRR, 11-30-10	CVS-MDLT1-775
25	Highly Confidential	

1	EXHIBIT INDEX - Continued	
2	CVS-Millikan-100.....	48
	Email	CVS-MDLT1-17100
3	Highly Confidential	
4	CVS-Millikan-101.....	53
	McKesson document	CVS-MDLT1-15502
5		
6	CVS-Millikan-102.....	60
	Bar Graph, Opioid Analgesics Poisoning Death	
7		
8	CVS-Millikan-103.....	62
	Bar Graph: U.S. Rates of Opioid Overdoes Deaths,	
9	Sales and Treatment Admissions, 1999-2010	
10	CVS-Millikan-104.....	64
	2012 Ohio Drug Overdose Deaths	
11		
12	CVS-Millikan-105.....	66
	International Narcotics Control Board,	
13	Comments on Reported Statistics, 2012	
14	CVS-Millikan-106.....	69
	Email chain,	CVS-MDLT1-91508
15	Confidential	
16	CVS-Millikan-107.....	89
	CVS DEA SOP Manual	CVS-MDLT1-34234
17	Confidential	
18	CVS-Millikan-108.....	94
	Controlled Drug - DEA SOP Manual	CVS-MDLT1-66380
19		
20	CVS-Millikan-109.....	100
	CVS Indiana, LLC Controlled Drug, DEA SOP Manual	
21	CVS-MDLT1-89315	Confidential
22	CVS-Millikan-111.....	106
	Email	CVS-MDLT1-61132
23	Confidential	
24	CVS-Millikan-112.....	107
	Email	CVS-MDLT1-88956
25	Confidential	

1	EXHIBIT INDEX - Continued	
2	CVS-Millikan-113.....	109
	CVS Distribution Center, DEA SOP Manual	
3		CVS-MDLT1-88957
		Confidential
4		
5	CVS-Millikan-115.....	21
	Transcript [excerpt] Nicastro	
6		
7	CVS-Millikan-117.....	29
	Transcript [excerpt] Nicastro	
8		
9	CVS-Millikan-119.....	39
	Transcript [excerpt] Nicastro	
10		
11		
12		
13		
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ALSO PRESENT: Ben Stanson, videographer
18 Jon Knowles, trial technologist

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1 The deposition of GARY MILLIKAN, taken on
2 discovery, pursuant to Notice heretofore filed, in the
3 Latitude Room, 2nd Floor, of Le Meridien Indianapolis,
4 123 South Illinois Street, Indianapolis, Indiana, on
5 January 11, 2019, at approximately 8:59 a.m.; upon
6 oral examination, and to be used in accordance with
7 the Federal Rules of Civil Procedures.

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9 * * *

10

11 THE VIDEOGRAPHER: We are now on the record.
12 My name is Ben Stanson. I'm the videographer for
13 Golkow Litigation Services. Today's date is
14 January 11, 2019, and the time is 8:59 a.m.

15 This video deposition is being held in
16 Indianapolis, Indiana, in the matter of National
17 Prescription Opiate Litigation, MDL Number 2804,
18 pending in the U.S. District Court, Northern District
19 of Ohio, Eastern Division.

20 The deponent is Gary Millikan.

21 Will counsel please identify yourselves for
22 the record?

23 MR. ROOF: Brian Roof, for Plaintiff, law
24 firm of Weisman Kennedy and Berris.

25 MR. GOETZ: Dan Goetz, on behalf of

1 Plaintiff.

2 MS. HARMON: Sarah Harmon for Cardinal
3 Health.

4 MR. CLARK: Miles Clark, Zuckerman and
5 Spaeder, on behalf of CVS Indiana, LLC; CVS Rx
6 Services, Inc., and the witness.

7 MR. HYNES: Paul Hynes, Zuckerman and
8 Spaeder, on behalf of the same parties.

9 THE VIDEOGRAPHER: Would counsel on the phone
10 please identify yourselves for the record?

11 MS. DILLINGHAM: Hi. Emily -- go ahead.

12 MR. ELSNER: Michael Elser, from Motley Rice,
13 on behalf of the Plaintiffs.

14 MS. DILLINGHAM: Emily Dillingham, Arnold
15 Porter, on behalf of the Endo and Par Defendants.

16 MR. SAUCEDO: Christian Saucedo, from Reed
17 Smith, on behalf of AmerisourceBergen.

18 THE VIDEOGRAPHER: Thank you. Our court
19 reporter is Kim Keene.

20 Will you please swear in the witness?
21
22
23
24
25

* * *

GARY MILLIKAN, after having first been duly

administered an oath, testified as follows:

THE WITNESS: I do.

THE REPORTER: Thank you.

* * *

EXAMINATION

BY MR. ROOF:

Q. Good morning, Mr. Millikan.

A. Good morning.

Q. We met off the record. My name is Brian

Roof, and as I said earlier, I represent the

Plaintiffs.

Can you state your full name for the record
and spell it?

A. My name is Gary Lee Millikan. G-A-R-Y,
L-E-E, M-I-L-L-I-K-A-N.

Q. And where do you currently live?

A. I live at Indianapolis, Indiana.

Q. What's the address?

A. 10944 Echo Trail, 46236.

Q. And what's your highest level of education that you've achieved?

A. I have a bachelor of science.

1 Q. And what was that in?

2 A. It was in pharmacy.

3 Q. Pharmacy?

4 And from what institute did you get that
5 degree from?

6 A. I graduated from Purdue University.

7 Q. Do you have any post degrees? Graduate
8 degrees?

9 A. No, sir.

10 Q. Are you a pharmacist?

11 A. Yes, I am a pharmacist.

12 Q. Do you have any other certifications or
13 anything like that, besides your degree from Purdue
14 University?

15 A. No, I don't believe so.

16 Q. No certifications in DEA regulations or
17 anything like that?

18 MR. HYNES: Objection to form.

19 THE WITNESS: No, I don't believe so.

20 Q. When were you first hired by the Indianapolis
21 distribution center?

22 MR. HYNES: Objection to form.

23 THE WITNESS: The -- I was first hired into
24 the distribution center in 1995.

25 Q. And were you hired by CVS Indiana LLC or CVS

1 Pharmacy, Inc?

2 A. This is prior to CVS. I began my career with
3 Hook drugs, which was purchased by Revco, and in 1995,
4 I went into the distribution center.

5 Q. And in 1995, who was your employer?

6 A. Revco.

7 Q. And then when did you work for Hook?

8 A. I worked for Hook's from 1977 until the Revco
9 acquisition.

10 Q. Do you know when that occurred?

11 A. In 1995.

12 Q. And then in 1995, when you worked for Revco,
13 you went to the Indianapolis distribution center?

14 A. Yes, I did.

15 Q. And where were you before that?

16 A. I was in the Hook corporate office.

17 Q. And what did -- was your position in 1995
18 with Revco?

19 A. I was a pharmacy manager for distribution.

20 Q. And how long did you hold that role for?

21 A. Until 1998.

22 Q. And what happened in 1998?

23 A. After CVS purchased Revco, I was promoted
24 from pharmacy manager to operations manager for the
25 entire facility.

1 Q. So when CVS purchased Revco in 1998, you were
2 promoted to operations manager?

3 A. Shortly after the purchase. I don't remember
4 the exact time frame, but it wasn't long. It was a
5 few months.

6 Q. So, the year was 1998?

7 A. Yes.

8 Q. And then what was your next position after
9 operations manager?

10 A. I held the position of operations manager
11 until probably 2009 or '10, and they changed my title
12 to production manager because a decision had been made
13 that each facility would only have one operations
14 manager.

15 Q. And so, was that a demotion?

16 MR. HYNES: Objection to form.

17 THE WITNESS: I don't -- my role did not
18 change. My title changed.

19 Q. And there was another operations manager,
20 though?

21 A. Before that, there was a senior operations
22 manager, and his title was changed to operations
23 manager.

24 Q. And who was that?

25 A. Andy Koropoulis.

1 Q. And then your title was changed from
2 operations manager to production manager?

3 A. Yes, it was.

4 Q. But your role did not change?

5 A. No, it did not.

6 Q. Your duties did not change?

7 A. No, they did not.

8 Q. And then from 2009/2010, how long did you
9 hold the production manager?

10 A. Until June of 2012, when I retired from the
11 company.

12 Q. Going back to your operations manager
13 position from 1998 to 2009 or 2010, what were your
14 duties?

15 A. The facility is 1 million square feet,
16 approximately 6- to 900 employees, five days a week,
17 three shift operation. I had various duties over that
18 time period, over different departments, whether it be
19 shipping, order filling, inventory control,
20 receiving.

21 Q. Anything else?

22 A. And pharmacy at times. I -- I believe I had
23 responsibilities for everything in the facility at
24 some time during that time period.

25 Q. When you say you had responsibilities for

1 everything at some point, was that on a continuous
2 basis or is that at separate points?

3 A. At separate points. Throughout that time
4 period, CVS was acquiring other companies. There were
5 many times when the director, the senior ops manager,
6 and the HR manager were out of the building for a
7 significant period of time and I was the senior person
8 in the building.

9 Q. As operations manager, did you report
10 directly to Mark Nicastro?

11 MR. HYNES: Objection. Time period.

12 MR. ROOF: As operations manager.

13 THE WITNESS: I -- as operations manager
14 during that period --

15 Q. Yes.

16 A. -- '98 to '09, he was only there for the
17 period of '08 and '09, and I believe I reported
18 directly to him during that time, although it is
19 possible that I reported to the senior ops manager
20 part of that time. There's a few different org
21 charts.

22 Q. I noticed that.

23 And who's the senior ops manager again?

24 A. Andy Koropoulis.

25 Q. Okay. So, it's your testimony that Mark

1 Nicastro was only director from '08 to '09?

2 A. No. He came in the building in '08. I
3 thought we were talking about the time period up to
4 '09. He is still the director of the facility.

5 Q. And prior to his -- well, strike that.

6 When did he arrive at the Indianapolis DC?

7 A. He arrived in July of 2008.

8 Q. So from the -- the period that you were
9 operations manager, from '08 to approximately 2010,
10 Mark Nicastro was the director of the Indianapolis DC?

11 MR. HYNES: Objection. Mischaracterizes the
12 testimony.

13 THE WITNESS: Yes, he was.

14 Q. And who was the director of the Indianapolis
15 DC prior to that?

16 A. Prior to Mark Nicastro, it was Dana Lilly.

17 Q. And how long did Dana Lilly have the position
18 of director?

19 A. I don't remember when he came in. Early
20 2000s until 2008, when he was promoted.

21 Q. And who was the director prior to Dana
22 Lilly?

23 A. That was Gary Kanapka.

24 Q. And when was he the director of the
25 Indianapolis DC?

1 A. I don't remember exactly, but it would be '98
2 or '99 until early 2000s.

3 Q. And when you were production manager from
4 1998 through 2009, 2010, who did you report to?

5 A. I was not production manager during that time
6 period. I was pharmacy manager and then operations
7 manager.

8 Q. You were pharmacy manager when?

9 A. 1995 to 1998.

10 Q. And then from 1998 through 2010, you were --

11 A. From 1998 until about 2009 or '10, I was the
12 operations manager.

13 Q. Okay. And then from about 2009 or 2010
14 through June of 2012, when you retired, you were the
15 production manager?

16 A. Yes, I was.

17 Q. Okay. Who did you report to as the
18 production manager?

19 A. It was probably Mark Nicastro, the director,
20 for that entire time. It's possible that it was
21 through Andy Koropoulis, the operations manager.

22 Q. Why do you say it's possible?

23 A. I -- I don't remember the organization charts
24 as -- during that period.

25 Q. Who did your reviews during the time you were

1 production manager?

2 A. Again, I -- I'm not completely sure. I
3 believe it's the director, Mark Nicastro. It is
4 possible that it was the operations manager, Andy
5 Koropoulis.

6 Q. And that same is true when you were
7 operations manager, correct?

8 A. Yes, it is.

9 Q. Okay. And when you were operations manager,
10 were you employed by CVS Pharmacy, Inc., or CVS
11 Indiana, LLC?

12 A. My W2 says: CVS Indiana, LLC.

13 Q. And that was the entire time you were
14 employed by a CVS entity?

15 A. I'm not -- I'm not sure.

16 Q. But the time you were operations manager and
17 production manager, you were employed by CVS Indiana,
18 LLC?

19 MR. HYNES: Objection. Mischaracterizes his
20 testimony.

21 THE WITNESS: I'm not sure how long that
22 title -- that company was in place without going back
23 and looking at all of those W2s.

24 Q. So when you were an operations manager,
25 though, you were a CVS Indiana, LLC employee?

1 MR. HYNES: Same objection.

2 THE WITNESS: I believe that CVS Indiana, LLC
3 was specifically my company.

4 Q. We're going to talk about suspicious order
5 monitoring and diversion, and I just want to make sure
6 we're on the same page as to what those terms mean.

7 And the way I define suspicious order
8 monitoring is the monitoring of orders that are
9 unusual size, orders that deviate substantially from a
10 normal pattern, and orders that are of unusual
11 frequency.

12 Do you understand that?

13 A. The suspicious orders that we had to
14 determine would meet that criteria.

15 Q. Okay. And diversion would be diverting
16 controlled substances to an illegitimate channel
17 rather than distributing it to medical, scientific, or
18 industrial channels?

19 MR. HYNES: Objection to form.

20 THE WITNESS: The -- my role in diversion
21 when I was directly -- part of it was to ensure that
22 the drugs that we shipped went to legitimate
23 pharmacies for legitimate concerns.

24 Q. So, can we have an understanding, though,
25 that diversion means diverting of controlled

1 substances to illegitimate channels?

2 MR. HYNES: Objection to form.

3 THE WITNESS: I have -- my role, when I was
4 directly involved with the suspicious ordering, was to
5 make sure that what we shipped was legitimate, to a
6 legitimate store for a legitimate reason.

7 Q. We'll use that as you -- the definition of
8 diversion then, okay?

9 A. Okay.

10 Q. And hydrocodone is a controlled substance?

11 A. Yes, it is.

12 Q. And hydrocodone combination products are a
13 controlled substance?

14 A. Yes, they are.

15 Q. And another name for hydrocodone combination
16 products is HCPs?

17 A. I'm not sure that I'm aware of that --

18 Q. You never --

19 A. -- term.

20 Q. You never heard of the term "HCPs" before?

21 A. HCP?

22 Q. Yes.

23 A. No, I don't believe I have.

24 Q. Okay. As operations manager and production
25 manager, did you oversee the pharmacy?

1 A. There were times when I did oversee the
2 pharmacy. There were some parts of the time when I
3 did not.

4 Q. Can you tell me those dates?

5 A. I don't know for sure, but I believe from
6 about 2009 till my retirement in June of 2012, I did
7 not have direct responsibility for pharmacy.

8 Prior to that, from '98 to '08, while I'm not
9 completely sure that I always had it, I feel like I
10 probably did.

11 Q. Why do you say "probably"?

12 A. I feel pretty certain that I did. I just
13 don't remember.

14 Q. And why from 2009 through 2012 did you not
15 have direct oversight of the pharmacy?

16 A. The director of the facility redid the
17 responsibilities for Andy Koropoulis and myself, and
18 he gave him the direct responsibility for pharmacy.

19 Q. And that was Mark Nicastro?

20 A. Yes, it was.

21 (CVS-Millikan-115 was marked for
22 identification.)

23 Q. And I want to hand you what is marked as
24 Exhibit 115.

25 MS. DILLINGHAM: Could you read the Bates

1 number for that document?

2 MR. ROOF: It's deposition testimony of Mark
3 Nicastro.

4 Q. Like I said, Exhibit 115, his deposition
5 transcript -- partial deposition transcript of Mark
6 Nicastro. The first page is the cover page for the
7 deposition transcript of the video deposition of Mark
8 Nicastro dated December 6, 2018 in Indianapolis,
9 Indiana.

10 Do you see that on the first page,
11 Mr. Millikan?

12 A. I'm sorry. Repeat the question.

13 Q. First page is a cover page for the video
14 deposition of Mark Nicastro dated December 6, 2018 in
15 Indianapolis, Indiana.

16 Do you see that?

17 A. Yes.

18 Q. Okay. And then the second page is page 23?

19 A. Yes. Yes.

20 Q. And the question on line 15 says:

21 "When you joined in 2008, who was responsible
22 for pharmacy related aspects of the business in
23 Indianapolis?

24 Answer: "Gary Millikan was my operations
25 manager and he oversaw the pharmacy."

1 Did I read that correctly?

2 A. Yes.

3 Q. Is that a correct statement?

4 A. I -- I was indirectly responsible. There was
5 a pharmacy manager, I believe.

6 Q. So, Mark Nicastro is not directly correct in
7 his testimony here?

8 MR. HYNES: Object to the form.
9 Mischaracterizes the document.

10 THE WITNESS: I'm not sure how he meant that
11 on "responsible."

12 Q. But you're saying you're now indirectly
13 responsible for the pharmacy, correct?

14 A. In 2008, I -- in 2008, pharmacy fell under
15 me, but there were other people that I managed that
16 directly were involved with pharmacy.

17 Q. And who were those people?

18 A. While I -- I'm not sure on that date. It was
19 either Steve Campbell or Gary Lamberth as the pharmacy
20 manager, and there would have been a pharmacy
21 supervisor or two.

22 Q. So there was a pharmacy manager under you,
23 correct?

24 A. Yes.

25 Q. And then the pharmacy supervisor under you?

1 A. Yes. And then there would have been another
2 pharmacy supervisor on the other shift.

3 Q. So two pharmacy supervisors under you?

4 A. Yes. Well, the second shift one did not
5 directly report to me. They reported through a second
6 shift manager.

7 Q. So the only two direct reports was the
8 pharmacy manager and the pharmacy supervisor,
9 correct?

10 A. My -- one of my direct reports would have
11 been the pharmacy manager. The pharmacy supervisor
12 would have reported to the pharmacy manager.

13 Q. And then under the pharmacy supervisor were
14 the pickers and packers?

15 A. They would have had all of the warehouse
16 associates: receiving, picking orders, shipping
17 orders, returns.

18 Q. And that's what is called the pickers and
19 packers?

20 MR. HYNES: Objection to form.

21 THE WITNESS: That's a term that is used. I
22 prefer warehouse associates.

23 Q. Okay. We can use warehouse associates.

24 So indirectly, the warehouse associates
25 reported through you, correct?

1 A. Yes, they did.

2 Q. What were your duties regarding suspicious
3 order monitoring of controlled substances and
4 diversion?

5 MR. HYNES: Objection. Time period.

6 Q. While you were operations manager.

7 A. While I was operations manager from 1998 till
8 2009 or '10, I had indirect knowledge and oversight
9 over the Suspicious Order Monitoring program.

10 Q. When you said you had indirect oversight over
11 the SOM, what do you mean?

12 A. I mean that the pharmacy manager, supervisor,
13 admin. personnel, and the warehouse associates in the
14 controlled substance area were actually doing the
15 program.

16 Q. And so what was your role as indirect
17 oversight over SOM?

18 A. Just the fact that that reported up through
19 me. Again, it was a million square feet, the number
20 of associates. It was one of my responsibilities.

21 Q. So the people that reported to you, or up
22 through you actually did the work for SOM, and -- but
23 since you were over them or managed them, you had
24 indirect oversight of SOM; is that correct?

25 A. Yes.

1 Q. Anything else you did regarding suspicious
2 order monitoring or diversion?

3 MR. HYNES: Objection. Time period.

4 Q. Same time period.

5 A. The same time period?

6 No.

7 Q. And what about your duties regarding
8 suspicious order monitoring of controlled substances
9 and diversion when you were production manager?

10 MR. HYNES: Objection. Compound.

11 Go ahead.

12 A. When I was production manager, Andy
13 Koropoulis had responsibility of pharmacy, but because
14 of my background in pharmacy, I had -- some knowledge
15 of the process and I continued to work with the DEA on
16 the audits and --

17 Q. Besides working with the DEA and audits,
18 anything else?

19 A. I don't believe so.

20 Q. Did you work with the DEA on audits when you
21 were operations manager?

22 A. Yes, I did.

23 Q. And what do you mean by you worked with the
24 DEA on audits?

25 A. When the DEA came to the facility to do their

1 annual -- not annual, but do an audit, I was one of
2 the persons who was with them.

3 Q. And what do you mean by one of the persons
4 with them?

5 A. They had my name, I believe, on the document
6 when they came to the facility.

7 Q. On what document?

8 A. I don't remember what that's called.

9 Q. And so what did you do during these audits?

10 A. Oh, the information that they requested,
11 balancing of the inventory, answering any questions.

12 Q. So you provided the information requested,
13 you balanced the inventory, and you answered
14 questions.

15 Anything else during the audit?

16 A. No, not that I recall.

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7 Q. Okay. Who else was involved in the DEA
8 audits?

9 A. Normally, it was two inspectors.

10 Q. And those two inspectors were from the DEA,
11 correct?

12 A. Yes.

13 Q. And who was involved from CVS Indiana?

14 A. The loss -- someone from loss prevention.
15 And then if they wanted to talk to someone, warehouse
16 associate or --

17 Q. So it was just you and the loss prevention
18 person handling the DEA audits?

19 A. As best I can remember.

20 Q. And who took the lead on the DEA audits, you
21 or the loss prevention?

22 MR. HYNES: Object to the form.

23 A. I believe we had shared responsibility.

24 Q. And again, your responsibility was providing
25 the information requested, balancing, and then

1 answering questions?

2 A. Yes.

3 Q. And that was balancing what again?

4 A. The inventory of a selected controlled
5 substances.

6 Q. And you had no other responsibilities during
7 the DEA audit?

8 A. Not that I can recall at this time. I'm --

9 Q. As either operations manager or production
10 manager, were you responsible for implementing the
11 standard operating procedure for controlled drugs?

12 MR. HYNES: Objection to form.

13 A. Could you repeat that?

14 Q. As either -- well, let's start with as
15 operations manager. Were you responsible for
16 implementing the standard operating procedures for
17 controlled drugs?

18 MR. HYNES: Objection to form.

19 A. The -- no, I was not.

20 (CVS-Millikan-117 was marked for
21 identification.)

22 Q. I'm going to go to Exhibit 117, which is
23 another partial deposition transcript.

24 MR. HYNES: Thanks, Brian.

25 Q. Again, first page of Exhibit 117 is the cover

1 page for the video deposition of Mark Nicastro on
2 December 6, 2018, correct?

3 A. Yes.

4 Q. And then the next page is page 46 of
5 Mr. Nicastro's deposition, correct?

6 A. Yes.

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23 Q. And it's your testimony, when you were
24 production manager, that Andy had control, or oversaw,
25 the pharmacy?

1 MR. HYNES: Objection.

2 A. While I don't remember the exact dates in
3 that whole time period, there was a time period when
4 he had responsibility for pharmacy.

5 Q. So sometime when you were production manager,
6 he had responsibility for pharmacy?

7 A. I believe so.

8 Q. And did you have responsibility for pharmacy
9 at any time when you were production manager?

10 A. I don't remember.

11 Q. Then in January of 2002, you started as a
12 part-time employee with CVS Indiana, LLC?

13 MR. HYNES: Did you say 2002?

14 A. No.

15 MR. GOETZ: 2013. January of 2013.

16 MR. HYNES: Could you repeat the question.
17 2002.

18 MR. ROOF: Yeah, sure.

19 BY MR. ROOF:

20 Q. Then in January of 2013, you started as a
21 part-time employee for CVS Indiana, LLC?

22 A. I believe it was actually in November of
23 2012.

24 (CVS-Millikan-18 was marked for
25 identification.)

1 Q. I want to hand you what has been marked as
2 Exhibit 18. Maybe we can just refresh your
3 recollection here.

4 A. Okay.

5 Q. This is your personnel file.

6 For the people on the phone, this document
7 was produced by CVS in the past couple of days.
8 There's no Bates number on it, and --

9 MR. HYNES: We can do a Bates number if you
10 want.

11 MR. GOETZ: It doesn't matter.

12 MR. HYNES: Okay.

13 BY MR. ROOF:

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15 MR. ROOF: Can we go off the record?

16 MR. HYNES: Yeah. Yeah, that would be good

17 for me, too.

18 THE VIDEOGRAPHER: We're off the record at

19 9:54 a.m.

20 (There was a brief recess.)

21 THE VIDEOGRAPHER: We are back on record at

22 10:07 a.m.

23 BY MR. ROOF:

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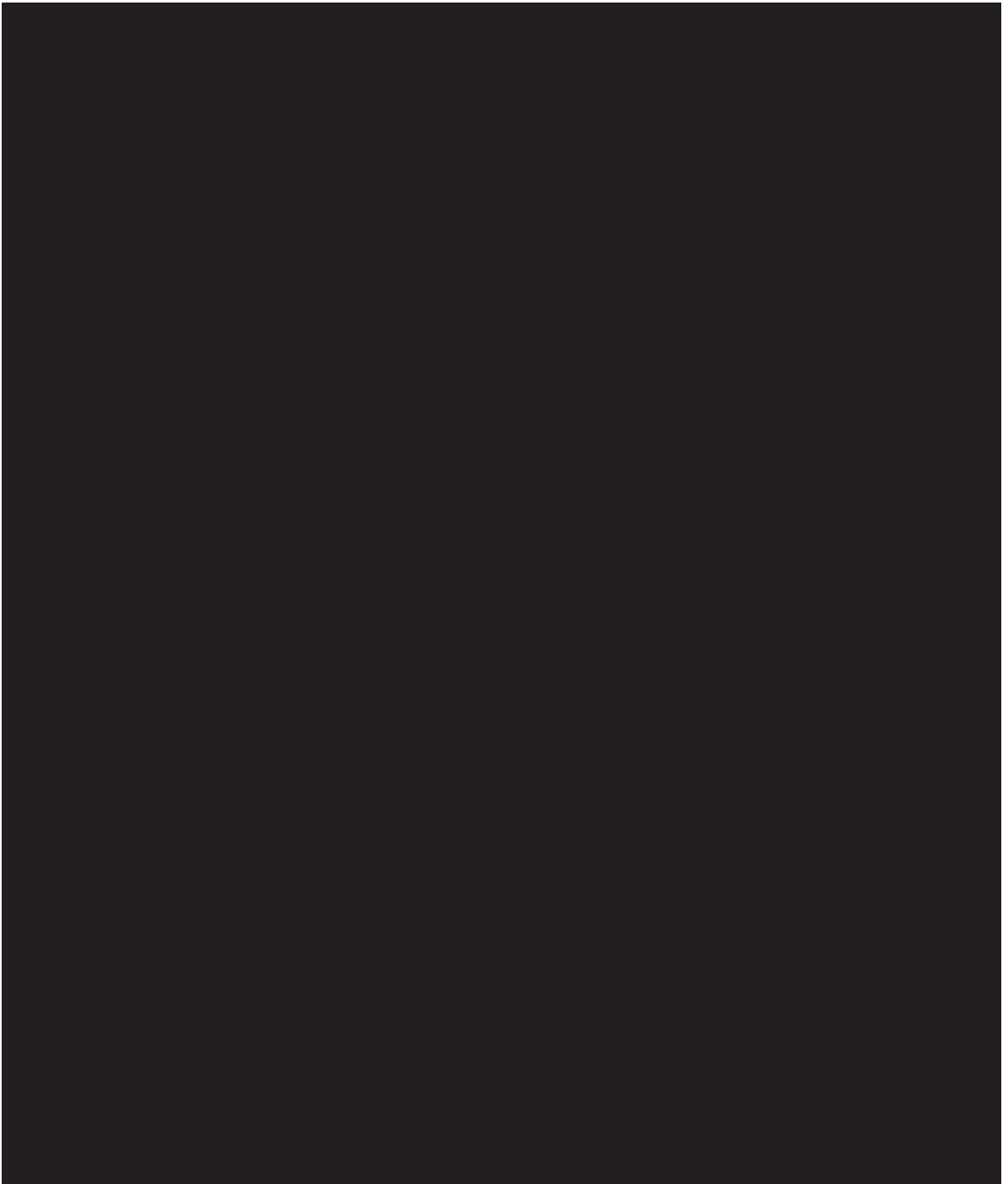
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20 Q. Did you know that there was an opioid crisis
21 sweeping the nation in 2006?

22 MR. HYNES: Objection to form.

23 A. I'm aware of opioids and the chance for
24 abuse.

25 Q. But you're not aware of any national epidemic

1 or crisis?

2 MR. HYNES: Same objection.

3 A. I'm aware that various things are reported.
4 I'm not privy to all of the facts of it.

5 Q. What about in 2007? Were you aware about the
6 opioid crisis in 2007?

7 MR. HYNES: Same objection.

8 A. I don't recall.

9 Q. And what about between 2008 and 2012?

10 MR. HYNES: Same objection.

11 A. I don't recall.

12 Q. Did you know that hydrocodone and hydrocodone
13 combination products were at the center of the opioid
14 crisis?

15 MR. HYNES: Same objection.

16 A. No.

17 Q. Did you know that the Indianapolis DC had a
18 role to play in preventing this epidemic?

19 MR. HYNES: Same objection.

20 A. CVS distribution center has a role to ship
21 legitimate prescription needs to our legitimate stores
22 for legitimate patients.

23 Q. And to prevent diversion, correct?

24 MR. HYNES: Same objection.

25 A. We want to make sure that those products go

1 in the correct channels.

2 (CVS-Millikan-101 was marked for

3 identification.)

4 Q. Handing you what has been marked as Exhibit

5 101.

6 Exhibit 101 is Bates stamped 15502 through

7 15526.

8 Do you see that in the lower right-hand

9 corner?

10 A. Yes.

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(CVS-Millikan-102 was marked for

8

identification.)

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Q. I'm going to hand you what has been marked as

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Exhibit 102.

11

102 is not Bates stamped. Exhibit 102 is

12

called, "Poisoning Deaths, Opioid Analgesics,"

13

correct?

14

A. Yes.

15

Q. And it is a bar graph, correct?

16

A. Yes.

17

Q. And it is a bar graph showing poisoning

18

deaths from opioid analgesics, correct?

19

MR. HYNES: Objection to form.

20

A. That's what it says.

21

Q. Okay. And it is from 1999 through 2013?

22

A. Yes.

23

Q. And there is a steady increase in deaths from

24

1999 to 2013, correct?

25

MR. HYNES: Objection to form.

1 A. That's what it shows.

2 Q. And in 1999 there was 4,041 deaths from
3 opioid analgesics, correct?

4 MR. HYNES: Objection to form.

5 A. That is what it alleges.

6 Q. And then it peaks out in 2011 at 16,917,
7 correct?

8 MR. HYNES: Same objection.

9 A. Again, that's what it alleges.

10 Q. And then it tapers off at -- in 2013 at
11 16,200, correct?

12 MR. HYNES: Same objection.

13 A. Again, that is what it alleges.

14 Q. Yeah. And the source of this is the
15 CDC/NCHS, National Vital Statistics System --

16 MR. HYNES: Same objection.

17 Q. -- correct?

18 A. Yes.

19 Q. And the U.S. Drug Enforcement Administration,
20 Office of Diversion Control published this document?

21 MR. HYNES: Same objection.

22 A. I'm not sure.

23 Q. It says --

24 A. I see where it says that, but I don't see
25 where it says it published it, but...

1 Q. But do you see where it says U.S Drug
2 Enforcement Administration, Office of Diversion
3 Control in the lower right-hand corner?

4 A. Yes.

5 Q. Did you know about the information conveyed
6 in Exhibit 102?

7 MR. HYNES: Objection to form.

8 A. I don't believe so.

9 (CVS-Millikan-103 was marked for
10 identification.)

11 Q. Handing you what has been marked as Exhibit
12 103.

13 And this is the document that you referred to
14 earlier and said you reviewed with your attorneys in
15 preparation for this deposition, correct?

16 MR. HYNES: Objection. Don't answer the
17 question.

18 Q. He already answered the question. Go ahead
19 and answer it.

20 MR. HYNES: Don't answer it.

21 Q. Have you seen this document before?

22 MR. HYNES: Objection. Instruct the witness
23 not to divulge anything that happened during prep
24 session.

25 Q. Have you seen this document before?

1 A. I guess I can't answer.

2 Q. So, that's a yes?

3 MR. HYNES: Objection. Asked and answered.

4 Q. We are relying on your earlier testimony
5 then.

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7 (CVS-Millikan-104 was marked for
8 identification.)

9 Q. Handing you what has been marked as Exhibit
10 104. Again, this document is not Bates stamped.

11 Exhibit 104 is dated 2012, Ohio Drug Overdose
12 Deaths, correct?

13 A. Yes.

14 Q. Have you seen this document before?

15 MR. HYNES: Objection, to the extent this
16 calls for the witness to divulge what he reviewed
17 during prep.

18 Q. Have you seen this document before?

19 A. I don't believe so.

20 Q. The first sentence says, "Drug overdose
21 deaths continue to be a public health crisis in Ohio
22 with 366 percent increase in the number of deaths from
23 2000 to 2012."

24 And then it cites to see Figure 1, correct?

25 A. Yes.

1 Q. I read that correctly?

2 A. Yes.

3 Q. And the source for that is the Ohio
4 Department of Health, correct?

5 MR. HYNES: Objection to form.

6 A. Yes.

7 Q. The first bullet point says, "Unintentional
8 drug overdoses caused 1,914 deaths to Ohio residents
9 based on data in 2012. This is the highest number of
10 deaths on record for drug overdose, and surpasses the
11 previous highest number (1,765) in 2011, by 8.4
12 percent."

13 Did I read that correctly?

14 A. Yes.

15 Q. And then the next bullet point says, "In
16 2012, five Ohioans died every day from unintentional
17 drug overdose, or one every five hours," correct?

18 MR. HYNES: Objection to form.

19 A. That's what it says.

20 Q. And the next bullet point says,
21 "Unintentional drug overdose continues to be the
22 leading cause of injury related deaths in Ohio, ahead
23 of motor vehicle traffic crashes, suicide and falls.
24 This trend began in 2007 and continues through 2012."

25 Did I read that correctly?

1 A. Yes.

2 Q. And then the next sentence says, "Opioids
3 (prescription or heroin) remain the driving factor
4 behind the unintentional drug overdose epidemic in
5 Ohio. Approximately two-thirds (1,272; 66.5 percent)
6 of the drug overdoses involved any opioid in 2012,
7 similar to 2011 (1,154; 65 percent)."

8 Did I read that correctly?

9 A. Yes.

10 Q. Did you know about the information conveyed
11 in Exhibit 104?

12 MR. HYNES: Objection. Time period.

13 Q. Before today.

14 A. I'm not sure.

15 Q. You have no idea?

16 A. I'm not sure if I knew or not.

17 Q. Did anybody from CVS tell you about the
18 information conveyed in Exhibit 104?

19 A. I'm not sure if they have or not.

20 (CVS-Millikan-105 was marked for
21 identification.)

22 Q. Handing you what has been marked as
23 Exhibit 105. This is also not Bates stamped.

24 Exhibit 105 is titled, International
25 Narcotics Control Board Comments on Reported

1 Statistics on Narcotic Drugs-2012, correct?

2 A. Yes.

3 Q. Have you seen Exhibit 105 before?

4 MR. HYNES: Objection and instruct the client
5 not to answer with respect to what he reviewed during
6 prep.

7 He can answer with respect to whether he's
8 reviewed this document outside of his prep session.

9 Go ahead.

10 A. I don't believe so.

11 Q. The first entry says: U.S. was the country
12 with the highest consumption of hydrocodone
13 (approximately 45.5 tons, or 99 percent, of global
14 consumption).

15 Did I read that correctly?

16 A. Yes.

17 Q. Were you aware of this?

18 A. No.

19 Q. After reviewing Exhibits 101 through 105,
20 does this change your opinion that there was an opioid
21 epidemic between 2006 and 2013 in the United States?

22 MR. HYNES: Objection to form.

23 A. No, I can't comment on that wording based on
24 these documents without looking into it more.

25 Q. If you had known the information in

1 Exhibits 101 through 105, and that there was an opioid
2 crisis in the U.S., would you have done your job
3 differently?

4 MR. HYNES: Objection to form. Lack of
5 foundation.

6 A. No. We had a duty to make sure that
7 legitimate prescriptions went to legitimate stores for
8 legitimate patients. So despite anything, we would
9 make sure that we were following the correct.

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23 (CVS-Millikan-106 was marked for
24 identification.)

25 Q. I'm going to hand you what has been marked as

1 Exhibit 106.

2 106 is Bates stamped 91508 through 91518,
3 correct?

4 A. Yes.

5 Q. Have you seen Exhibit 106 before?

6 MR. HYNES: Objection to the extent it calls
7 for the client, the witness, to divulge documents
8 reviewed during prep. I instruct the witness to only
9 answer as to what he's reviewed outside of his prep
10 session.

11 MR. GOETZ: What is the grounds for that? I
12 mean, is -- is there a -- are you referencing a case
13 management order? I'm curious.

14 MR. HYNES: No, no. I just -- I don't
15 think -- what we discussed during his prep session, I
16 think that's privileged.

17 MR. GOETZ: You're not asking what you
18 discussed. You're asking if he saw that document.

19 MR. HYNES: But I think documents I choose to
20 show him, I think that's privileged.

21 MR. GOETZ: We're not asking him: What
22 documents did the lawyer choose to show you?

23 MR. HYNES: He's asking --

24 MR. GOETZ: Asking: Did you see this
25 document? It's a different question than,

1 Mr. Millikan, what documents did Mr. Hynes choose to
2 show you during the prep?

3 MR. HYNES: But -- but if the answer is, I
4 saw this during prep --

5 MR. GOETZ: Totally different question.

6 MR. HYNES: But if his answer is, I saw this
7 during prep, that's, to me, privileged.

8 Do you agree?

9 MR. GOETZ: Those are the documents -- no, I
10 don't because those are the documents we chose to use.

11 It's a different question than, what
12 documents did Mr. Hynes show you?

13 If we have a document that we choose to use,
14 we have a right to know if he saw them before he
15 walked in here.

16 MR. ROOF: And Eric allowed that yesterday.

17 MR. GOETZ: I mean, it just -- and I'm just
18 curious. I -- I -- I wanted to know if you're looking
19 at a CMO because there was --

20 MR. HYNES: It's not a CMO.

21 MR. GOETZ: -- as to what -- as to whether
22 you had to identify everything you showed to your
23 witnesses. There was that issue. And what it was
24 resolved at, no, but everything he used for prep has
25 to have been produced.

1 MR. HYNES: That was for 30(b) .

2 MR. GOETZ: Okay. I -- I --

3 MR. HYNES: And that's for 30(b), not
4 everything -- but, listen, I'll -- I'll give it some
5 thought. This is what I've always done in
6 depositions, and I've never had a problem with it.

7 Miles and I will talk about it at the
8 break.

9 MR. GOETZ: Okay. Fair enough.

10 MR. HYNES: Okay.

11 MR. ROOF: Okay. So, my question --

12 MR. HYNES: Do you want to ask the question
13 again and I'll just say --

14 MR. ROOF: Yeah.

15 MR. HYNES: -- "same objection"?

16 BY MR. ROOF:

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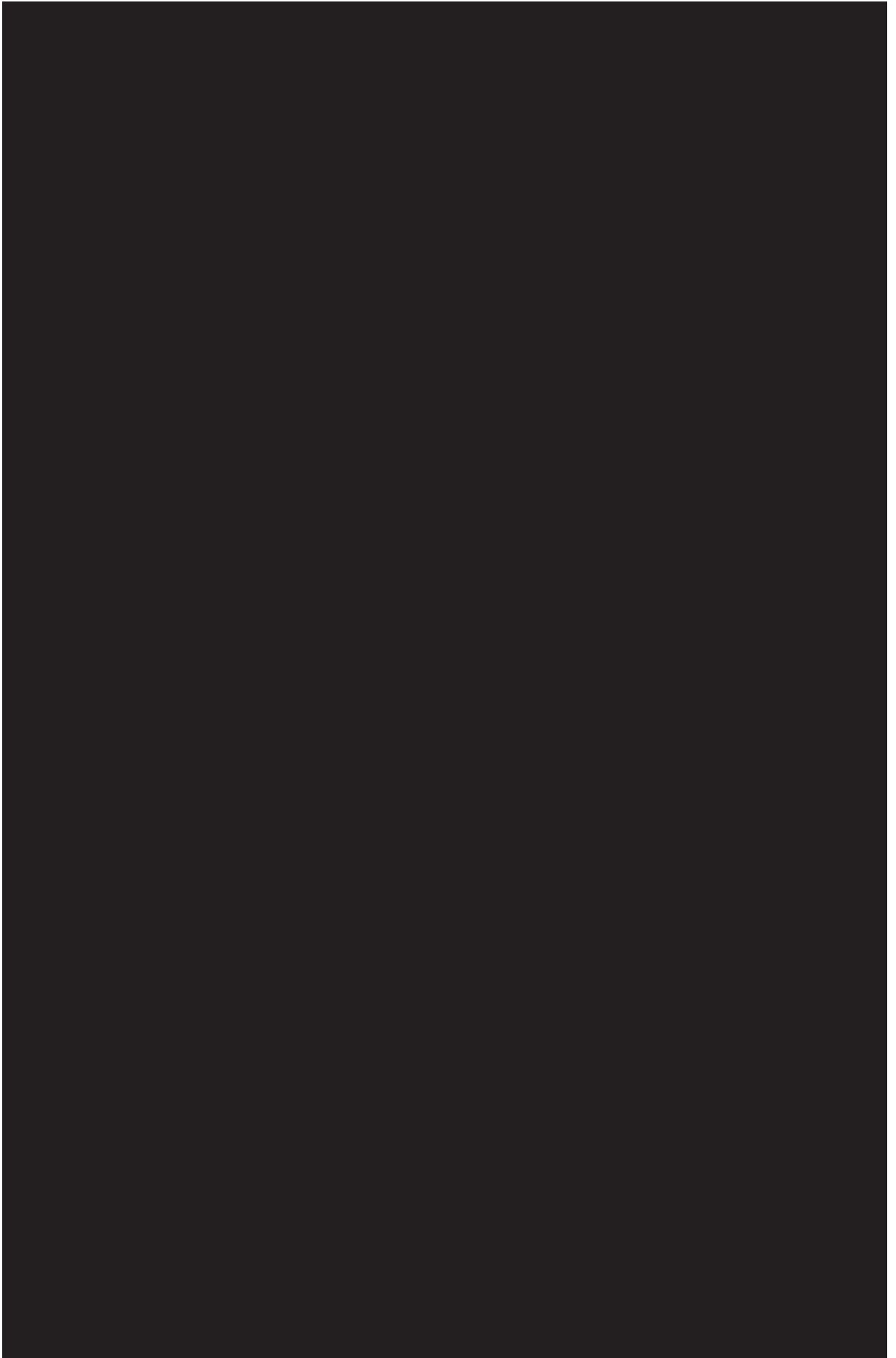
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15 Q. You've never seen or read 21 USC 823(e)?

16 A. I don't know that. This is 12 years ago.
17 I've basically been retired for six years. I can't
18 quote that code.

19 Q. My question is: Have you seen that code
20 before?

21 A. I believe so.

22 Q. Okay. As part of your job?

23 A. Or as a student.

24 Q. You can't recall which one?

25 A. No.

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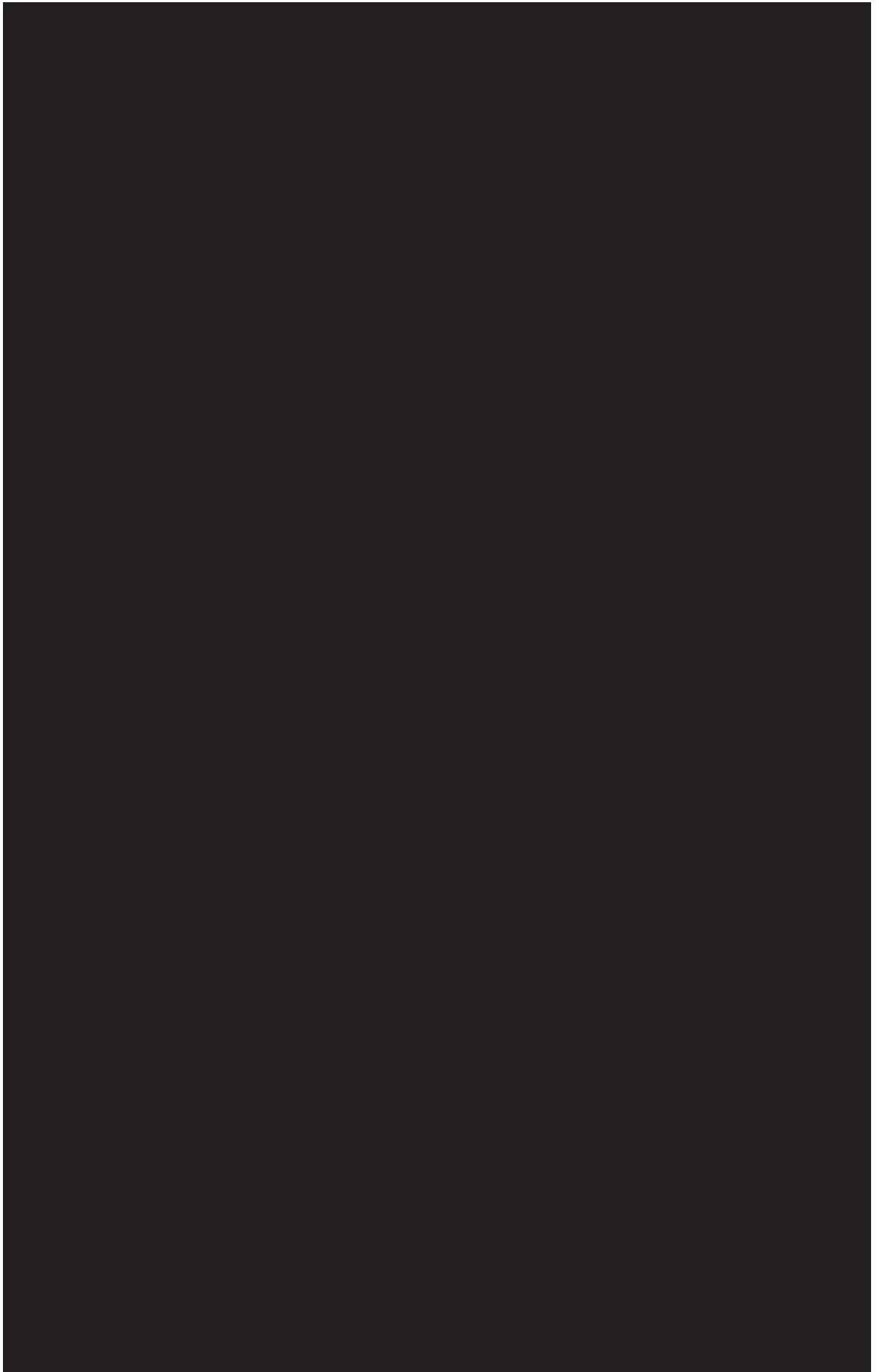
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MR. HYNES: Can we would take a two-minute break? We've just been going for a while.

MR. ROOF: Sure. Absolutely.

THE VIDEOGRAPHER: Off the record at 11:35 a.m.

(There was a brief recess.)

THE VIDEOGRAPHER: We are back on the record at 11:52 a.m.

BY MR. ROOF:



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(CVS-Millikan-111 was marked for

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identification.)

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22 (CVS-Millikan-112 was marked for
23 identification.)

24 Q. Handing you what has been marked as
25 Exhibit 112.

1 Back up.

2 Have you seen Exhibit 111 before?

3 MR. HYNES: Same objection as to documents

4 reviewed during prep session.

5 A. Yes.

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13 MR. GOETZ: Do you want to break for lunch
14 now?

15 MR. HYNES: We might as well.

16 THE VIDEOGRAPHER: We are off the record at
17 12:03 p.m.

18 (There was a luncheon break.)

19 THE VIDEOGRAPHER: We are back on record at
20 12:55 p.m.

21 BY MR. GOETZ:

22 Q. Mr. Millikan, my name is Dan Goetz. We met
23 earlier.

24 (CVS-Millikan-9 was marked for
25 identification.)

1 I'm going to hand you what has been marked as
2 Millikan Exhibit 9.

3 Do you recognize that document, sir?

4 A. Yes.

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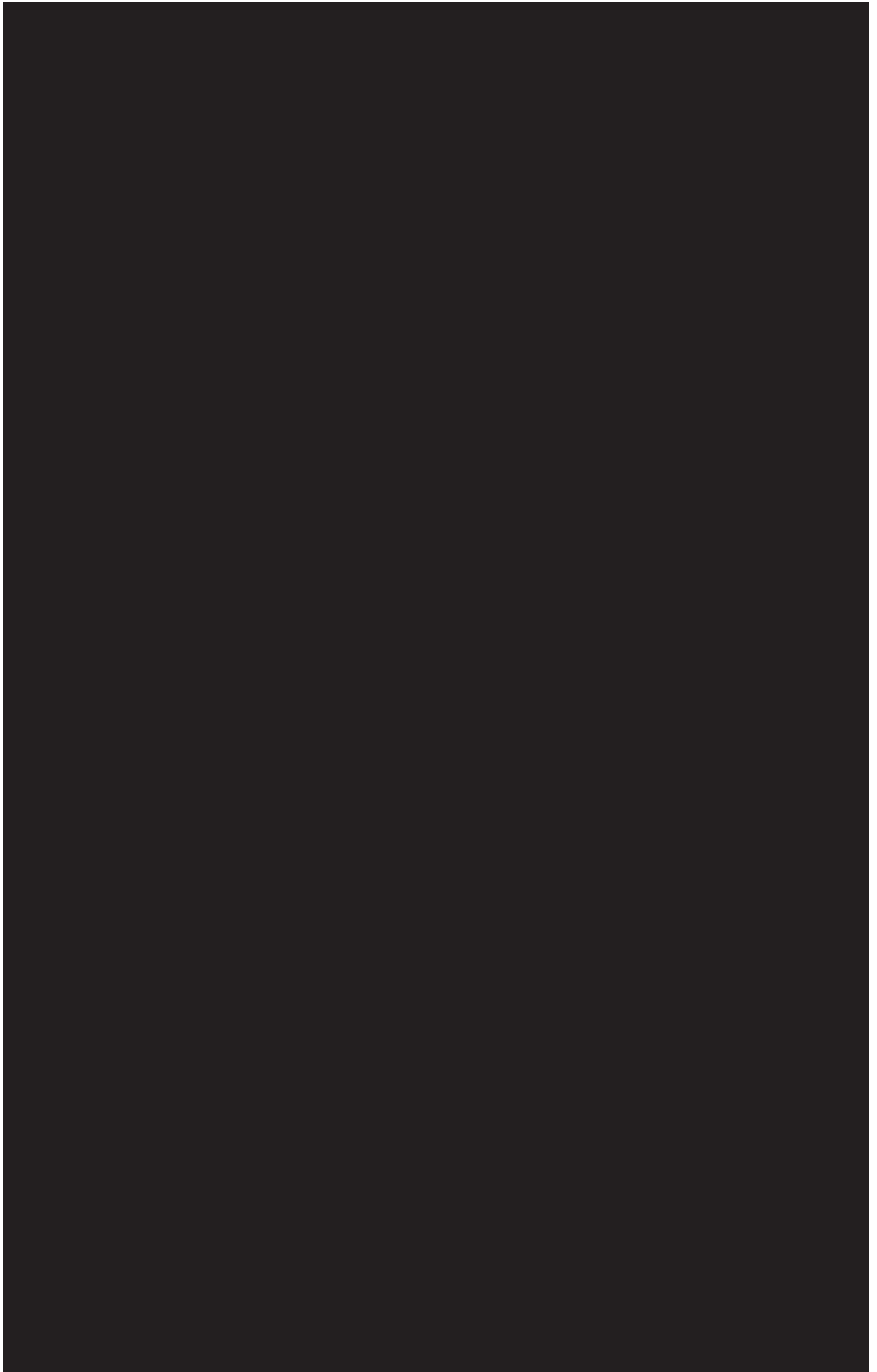
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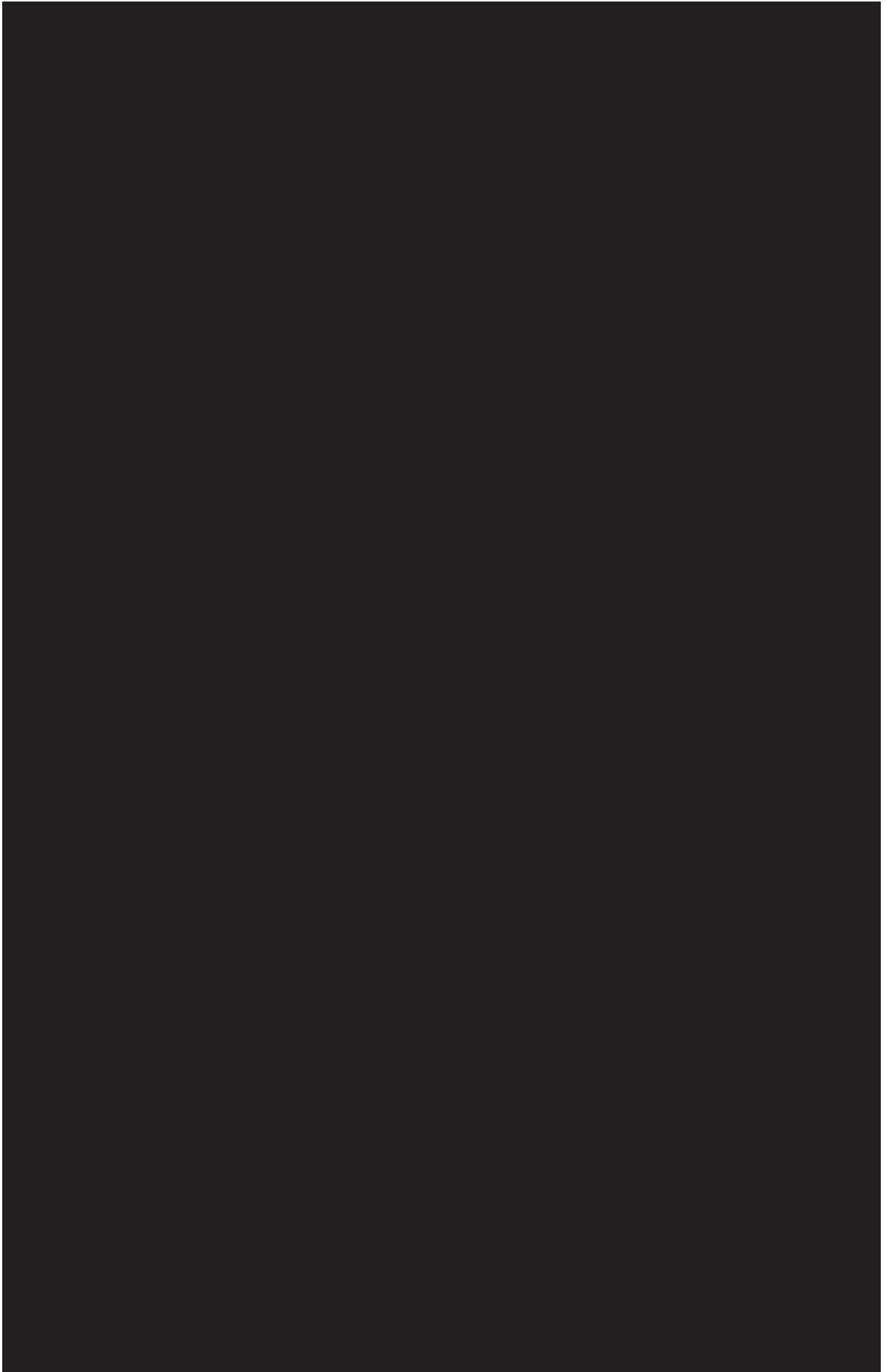
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MR. GOETZ: Off the record.

3

THE VIDEOGRAPHER: We're off the record at

4

1:27 p.m.

5

(There was a brief recess.)

6

THE VIDEOGRAPHER: We're back on the record

7

at 1:28 p.m.

8

(CVS-Millikan-48 was marked for

9

identification.)

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BY MR. GOETZ:

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17 MR. GOETZ: Do you want to take a break or
18 keep going?

19 Mr. Millikan, would you like a short break or
20 would you like to keep going?

21 THE WITNESS: Whatever you want to do is fine
22 with me.

23 THE VIDEOGRAPHER: We are off record at
24 1:46 p.m.

25 (There was a brief recess.)

1 THE VIDEOGRAPHER: We are back on record at
2 2:00 p.m.
3 BY MR. GOETZ:

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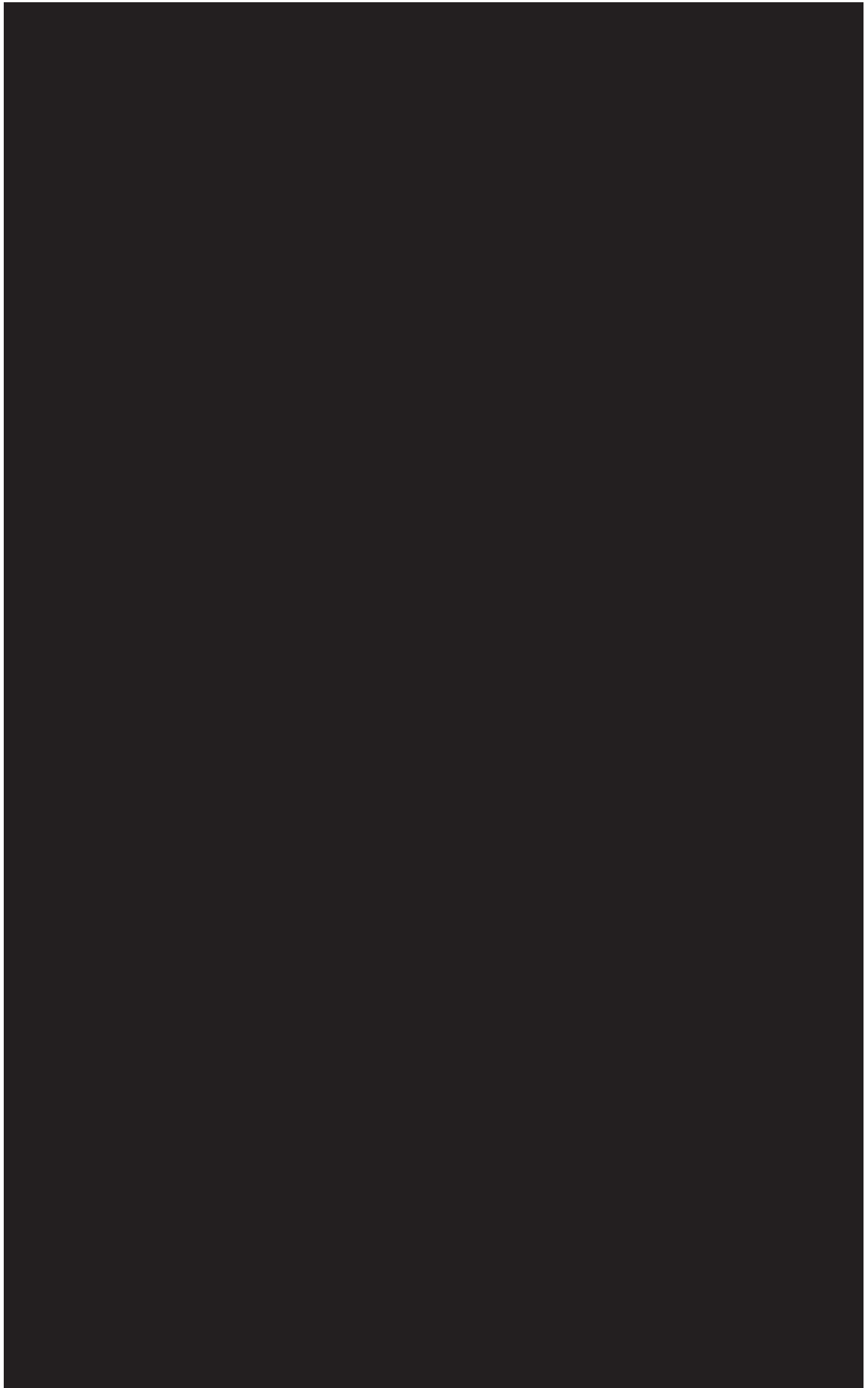
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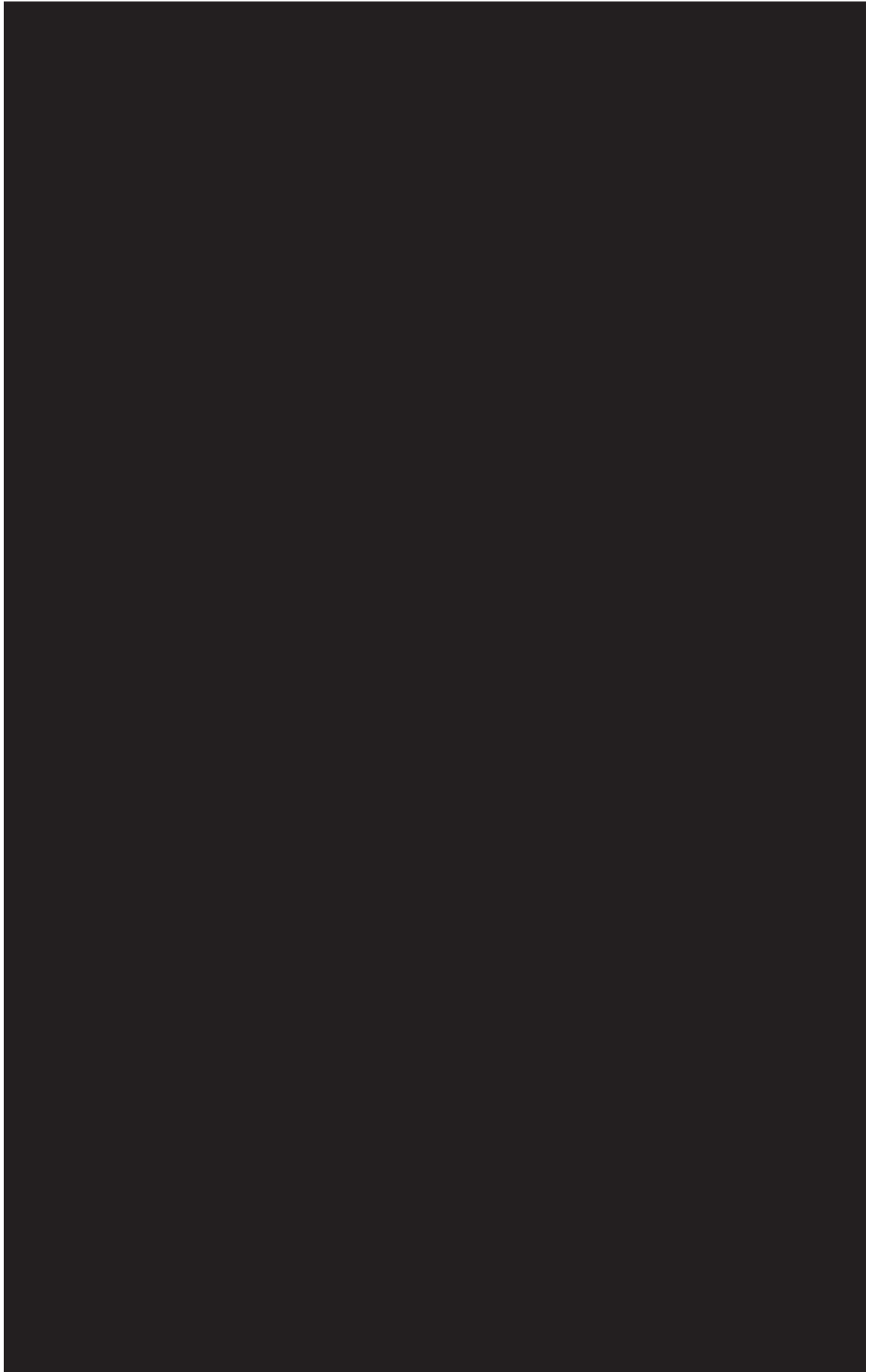
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2 (CVS-Millikan-36 was marked for
3 identification.)

4 Q. I'm going to hand you Exhibit 36.

5 I just want to find out if these are the
6 instructions you're speaking about.

7 A. Oh, sorry.

8 These are not the instructions I'm referring
9 to.

10 Q. Oh. Have you -- and you can object -- have
11 you seen the instructions during your prep?

12 MR. HYNES: Let me -- I'm going to object and
13 tell him not to answer.

14 We've produced the instructions if that's
15 what you're getting at.

16 MR. GOETZ: I -- I would like for you to
17 identify. We --

18 MR. HYNES: Okay.

19 MR. GOETZ: I have no idea where they --

20 MR. HYNES: Yeah, I can identify. It's not a
21 problem. I can't do it, like, right now, but...

22 BY MR. GOETZ:

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Q. Mr. Millikan, you spent 35 years in a distribution center distributing controlled drugs, correct?

A. No.

Q. How long?

A. '95 to 2012.

Q. Seventeen years?

A. Yes.

Q. Okay. You spent 17 years in a distribution center distributing controlled substances.



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18 Q. And where is the analyst -- did you say the
19 analyst office?

20 A. Yes.

21 Q. Where was that at the Indianapolis
22 distribution center?

23 A. Near the southeast end of the building.

24 Q. Where was the pharmacy office?

25 A. Near the northeast end of the building.

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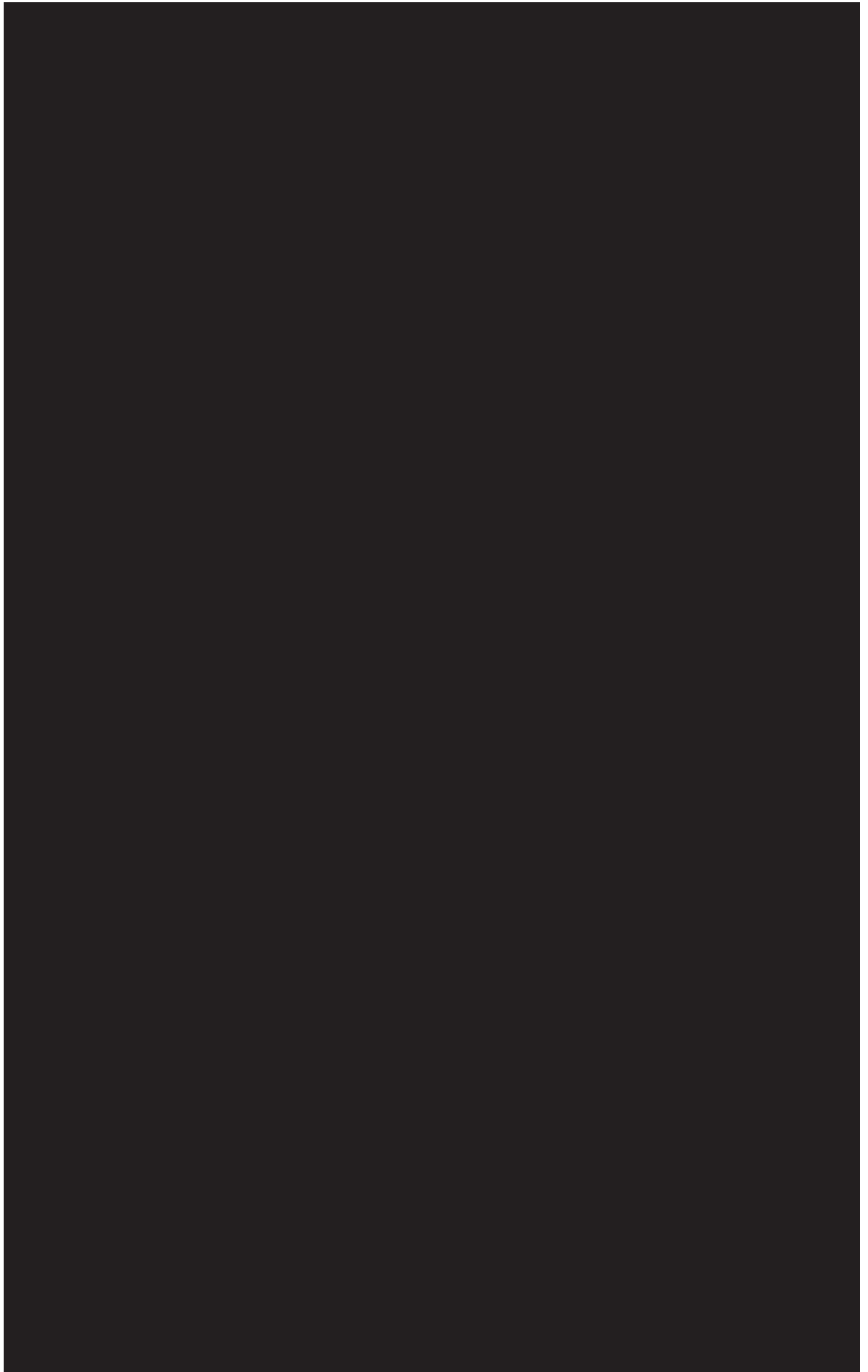
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1 Review Report as potentially suspicious as identified
2 by the computer algorithm model?

3 A. Yes.

4 Q. When that order was on there, would you
5 automatically look at additional information that was
6 not shown on that Item Review Report?

7 A. No.

8 Q. No.

9 So, there were oftentimes, and that's where
10 we started, and I apologize.

11 A. Oh, yes.

12 Q. So when I said to you, Mr. Burtner, according
13 to those notes, looks at additional information not
14 shown on the Item Review Report two to three times,
15 per hundred orders -- and we have been going through
16 those control studies to show you when he looks at an
17 IRR, how often he would look at additional due
18 diligence.

19 How often would you do additional due
20 diligence that was not reflected on the Item Review
21 Report for an order that was flagged? What
22 percentage?

23 MR. HYNES: Object to form.

24 Go ahead.

25 A. I don't remember the percent, but it would

1 not be a large percent.

2 Q. And so, under five?

3 MR. HYNES: Objection to form.

4 Go ahead.

5 Under 5 percent or under five --

6 MR. GOETZ: Under 5 percent.

7 THE WITNESS: Five percent.

8 MR. GOETZ: Under 5 percent.

9 MR. HYNES: Objection to form.

10 BY MR. GOETZ:

11 Q. Under 5 percent?

12 A. I don't know, but, yes, probably.

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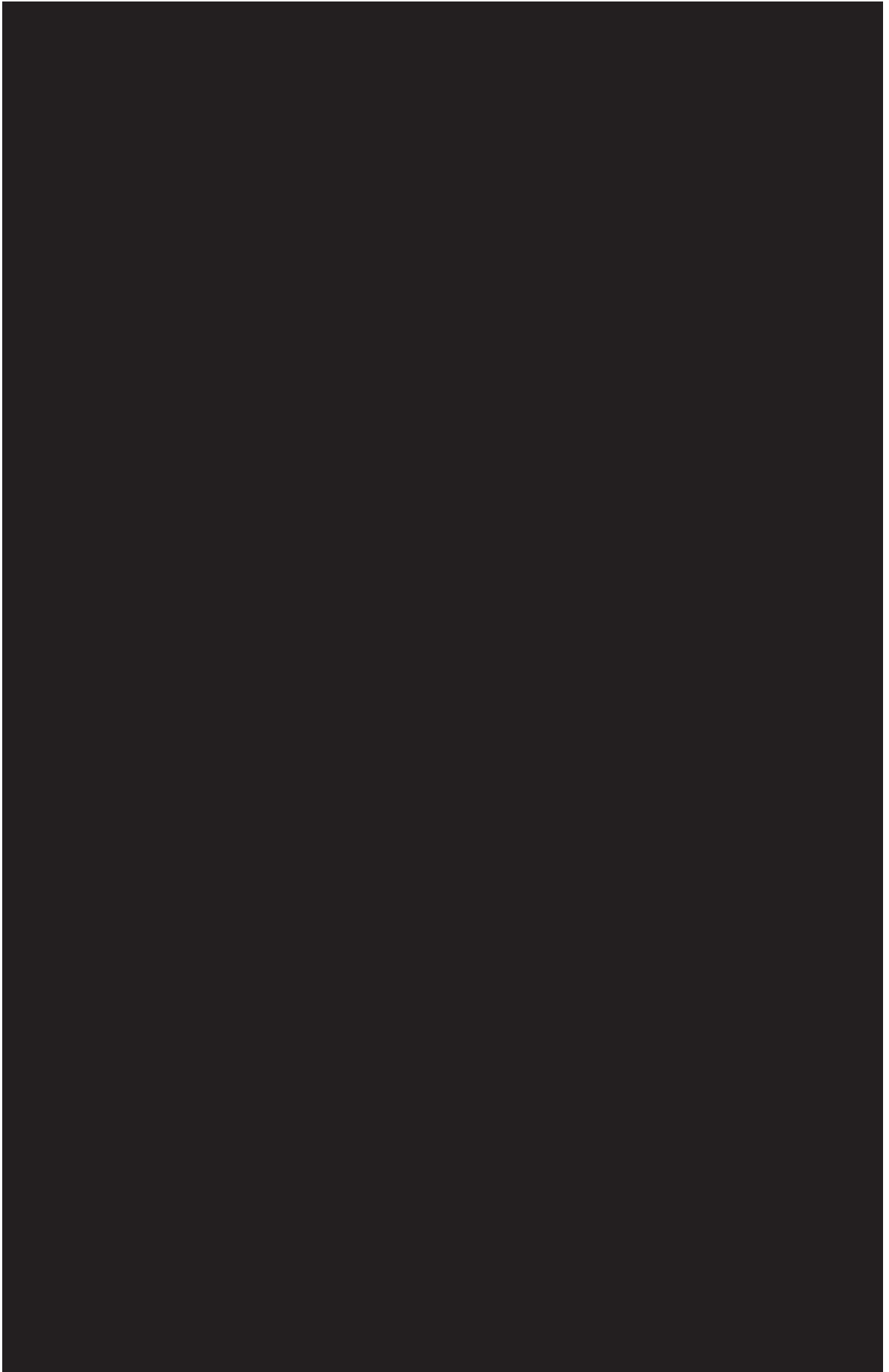
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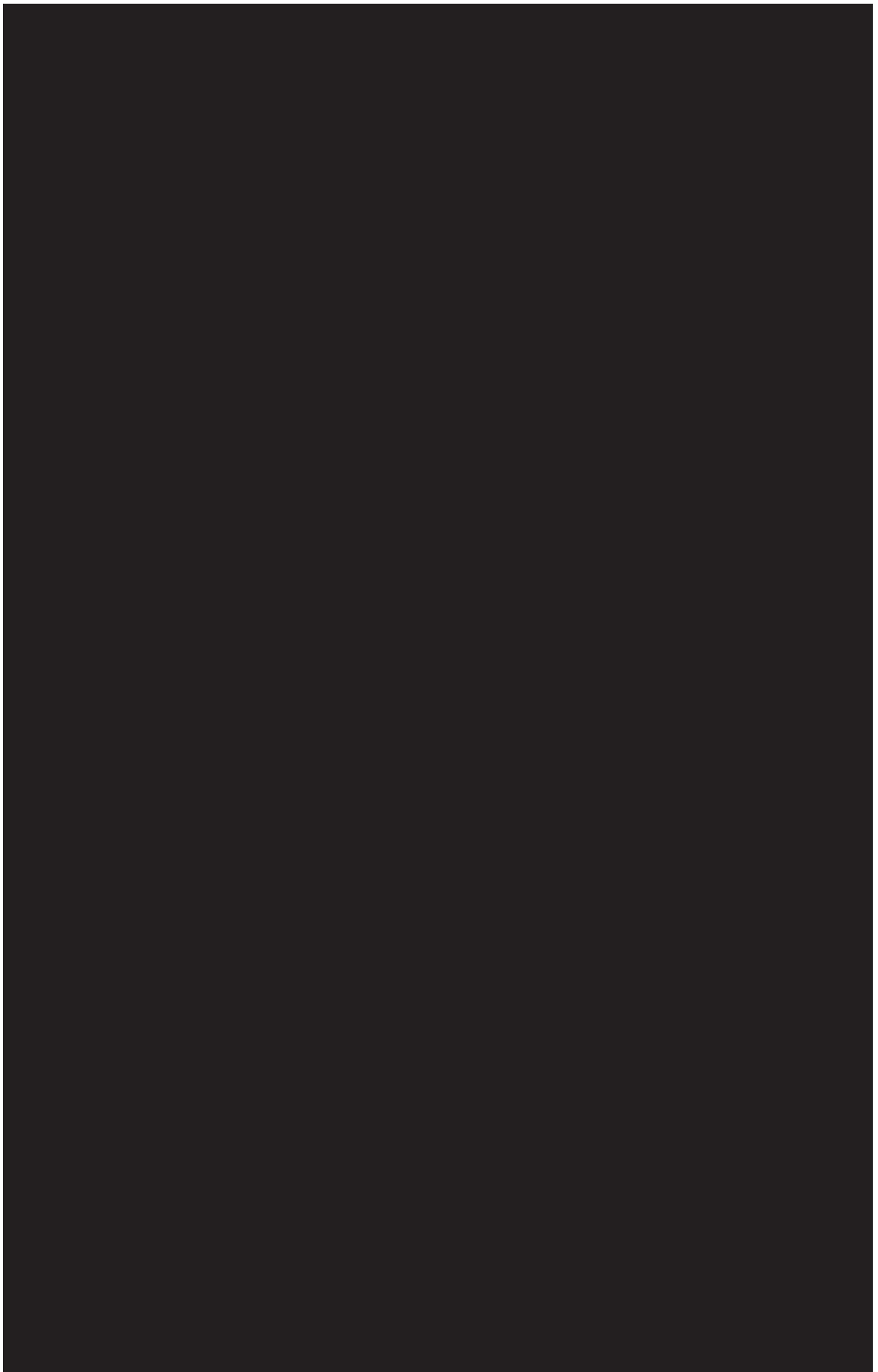
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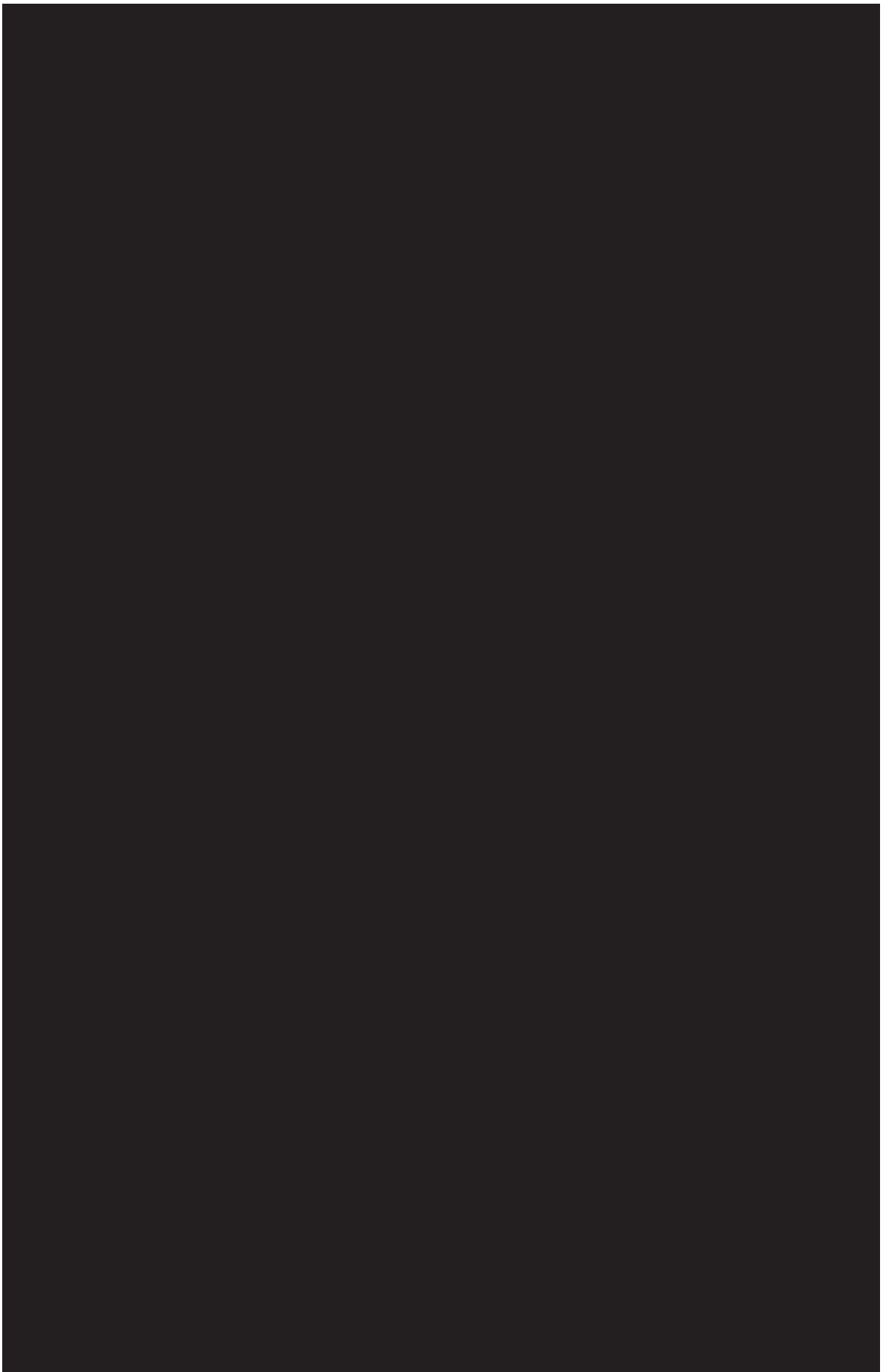
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(CVS-Millikan-37 was marked for
identification.)

(CVS-Millikan-38 was marked for
identification.)

Q. I'm going to show you what has been marked as
Plaintiff's Exhibit 37 and Plaintiff's Exhibit 38.

Here's 37 and 38.

MR. HYNES: We're short a copy on 38.

MR. GOETZ: I -- I apologize.

Do you have a 38 for you?

MR. HYNES: I do.

MR. GOETZ: And does the witness have a 38?

THE WITNESS: Yes.

MR. GOETZ: Okay.

BY MR. GOETZ:

1 Q. Exhibit 37, do you see that?

2 A. Yes.

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12 Q. And it's to Dan Deaton.

13 Who's Dan Deaton?

14 A. He would have been a pharmacy supervisor
15 probably at that time.

16 Q. And who's [REDACTED]

17 A. The pharmacy manager at that time.

18 Q. And who's Joseph Shohl?

19 A. Was probably the logistics manager -- or I'm
20 sorry -- the loss prevention manager.

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10 Q. I will represent to you that from a period of
11 2-6 of 2013 to December 30th of 2013 -- strike that.

12 Mr. Millikan, I'm handing you what has been
13 marked as Exhibit 13. You're going to want to keep
14 that. It doesn't matter.

15 A. Oh.

16 Q. That is a list of what says, Track One CVS
17 Store Information.

18 Do you see that?

19 A. Yes.

20 Q. All right. Do you understand that the first
21 opioid litigation case involves the County of
22 Cuyahoga?

23 A. I don't know that it's the first.

24 Q. Okay. Do you understand that the County of
25 Cuyahoga, the City of Cleveland, the County of Summit,

1 and the City of Akron are joined together in one
2 lawsuit to be tried together?

3 A. Yes, I believe so.

4 Q. Okay. I will represent to you they are the
5 first case that are scheduled to be tried.

6 A. Okay.

7 (CVS-Millikan-33 was marked for
8 identification.)

9 Q. These stores that you see on Exhibit 33,
10 they, according to what has been produced by CVS,
11 represent those stores that are part of what we're
12 calling track one, because that's the first case to be
13 tried.

14 Do you see up top: Track One CVS Store
15 Information?

16 A. Yes.

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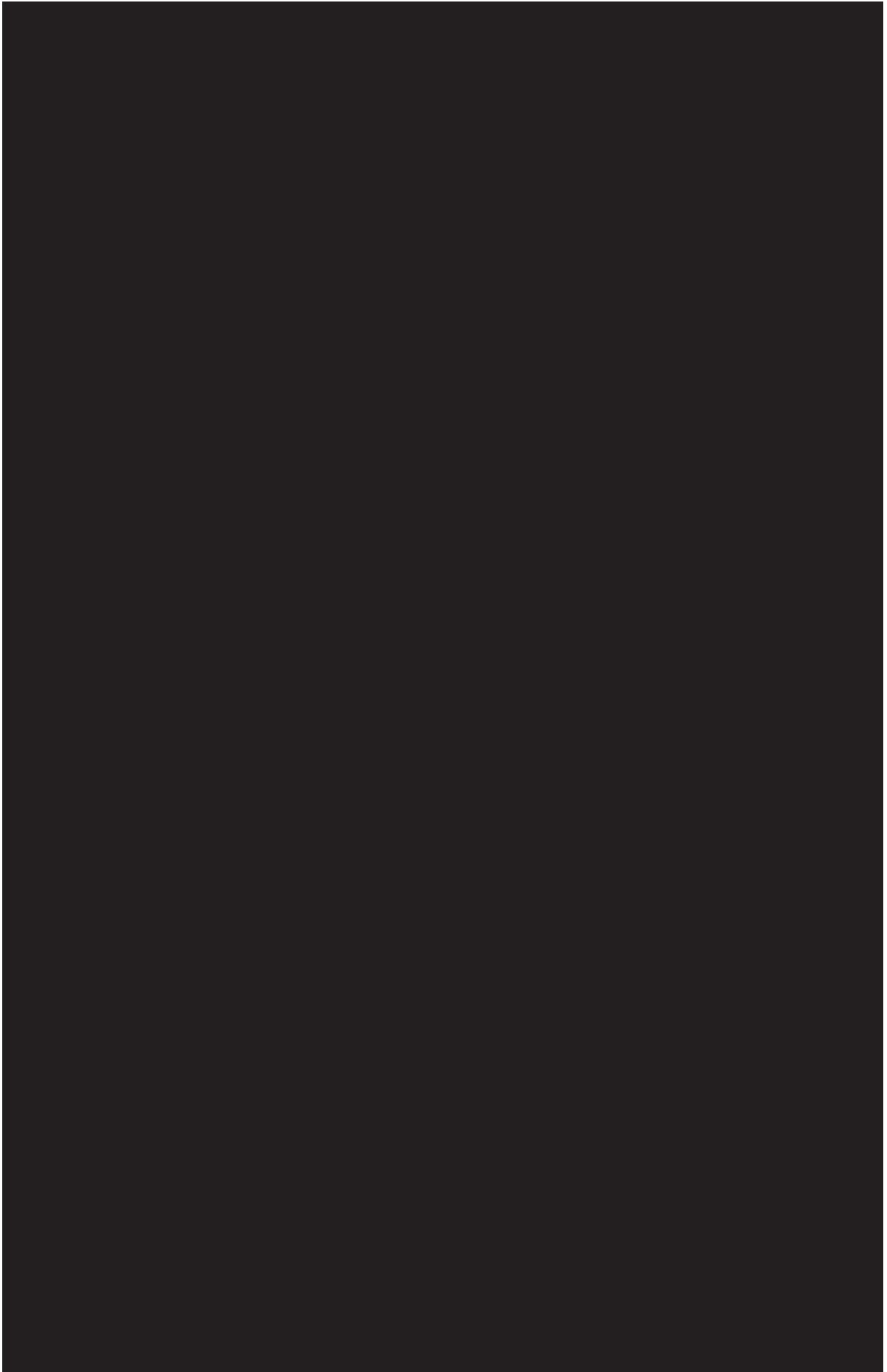
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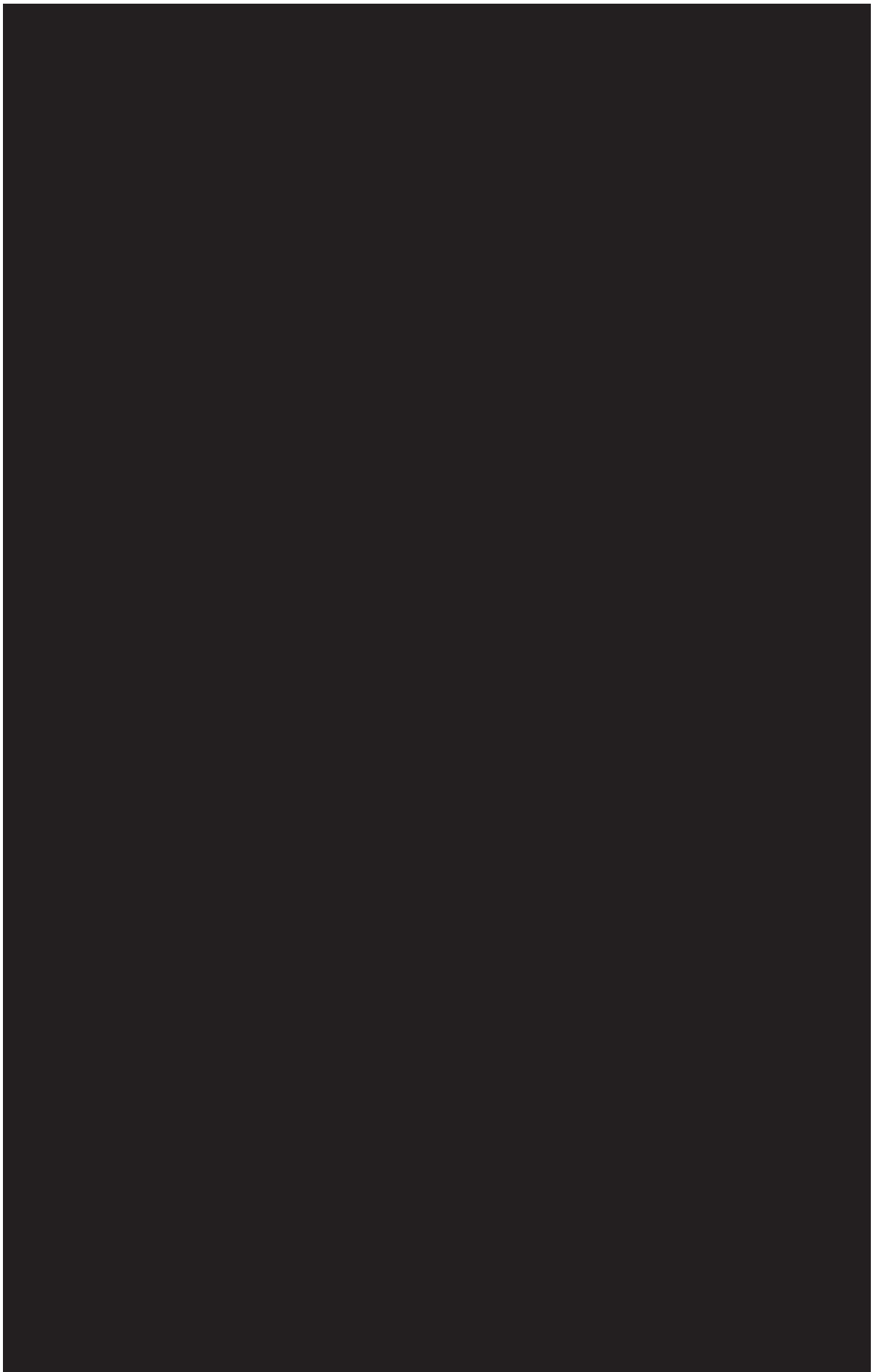
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15 MR. GOETZ: Let's take a break.

16 THE VIDEOGRAPHER: We are off record at

17 4:36 p.m.

18 (There was a brief recess.)

19 THE VIDEOGRAPHER: We are back on the record

20 at 4:49 p.m.

21 MR. GOETZ: Mr. Millikan, I don't have any

22 further questions for you, pending what Mr. Hynes asks

23 you.

24 THE WITNESS: Okay. Thank you.

25 MR. GOETZ: And thank you for your time

1 today.

2 THE WITNESS: Thank you.

3 EXAMINATION

4 BY MR. HYNES:

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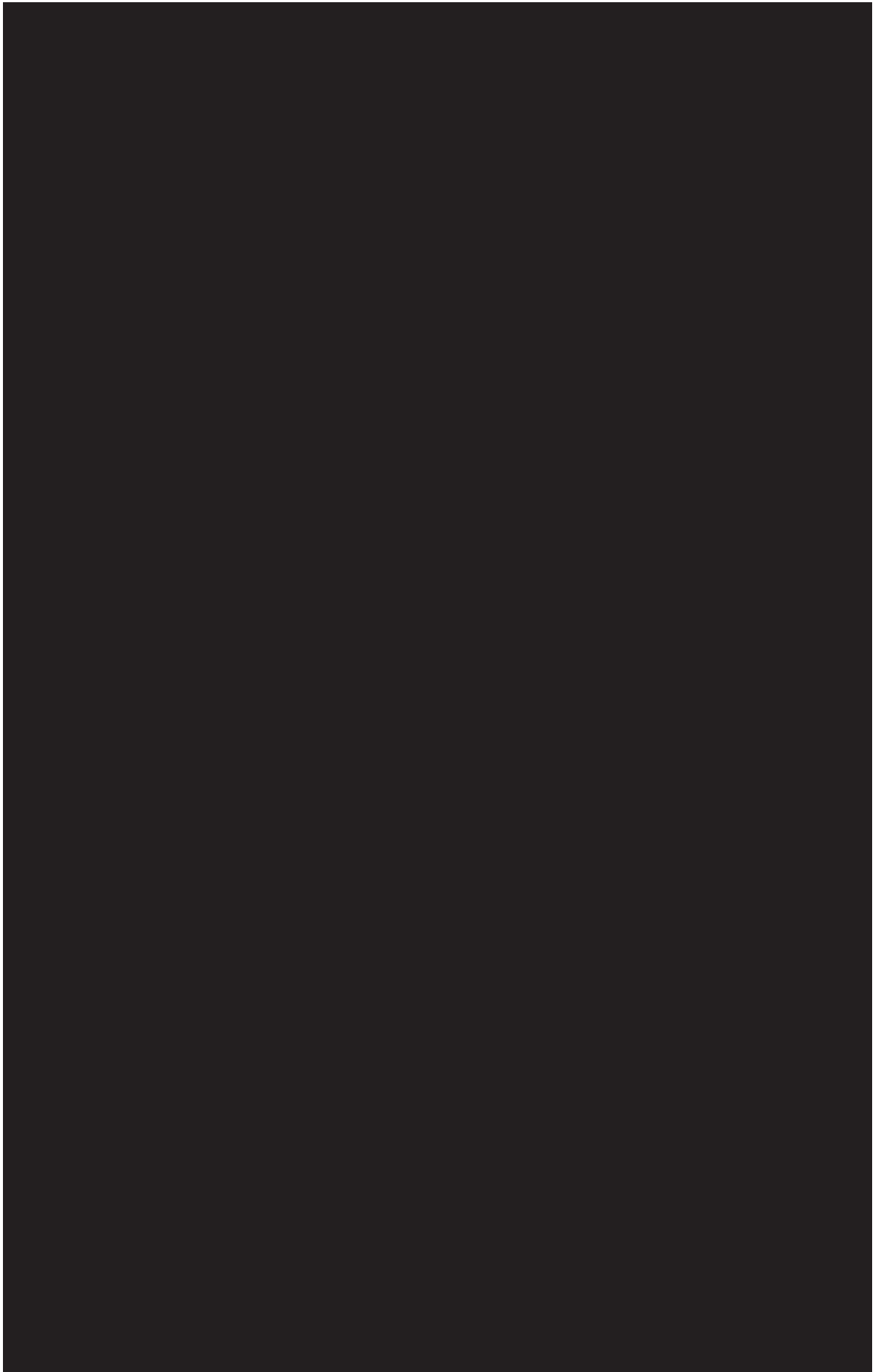
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Q. Okay.

MR. HYNES: No further questions.

RE-EXAMINATION

BY MR. GOETZ:



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MR. GOETZ: That's all I have. Thank you,
sir.

THE WITNESS: Okay. Thank you.

THE VIDEOGRAPHER: We are off the record at
5:02 p.m.

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E R R A T A

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3 PAGE LINE CHANGE

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do

hereby certify that I have read the foregoing pages, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

GARY MILLIKAN

DATE

Subscribed and sworn

to before me this

_____ day of _____, 20____.

My commission expires: _____

Notary Public